



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable O. F. Lockhart, Chairman
Board of Insurance Commissioners
Austin, Texas

Dear Mr. Lockhart:

Opinion No. 0-6383

Re: Whether or not a joint
stock company chartered
as a "guaranty company"
may amend its charter
so as to adopt the name
trust and guaranty com-
pany.

To have your letter requesting an opinion upon
the above subject matter, as follows:

"Southern Guaranty Company, a joint stock
company created under Chapter 2, Title 105 of
the Revised Statutes, heretofore qualified to
transact business under Section 2, Chapter 16,
beginning with Article 4582 of the Revised Stat-
utes.

"The Company has requested permission from
this Department to change its name, by appropriate
agreement among its stockholders, to Southern
Trust and Guaranty Company.

"Will you please advise me whether this per-
mission should be granted in view of Article 342--902
which is a part of the Banking Code passed by the
last legislature."

Article 2 of Chapter IX of Texas Banking Code of
1943 (Vernon's Codification Civil Statutes Article 342-902)
in so far as is pertinent is as follows:

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"It shall be unlawful for any person, corporation, firm, partnership, association or common law trust: * * * to use the term * * * 'trust' * * * in its name stationery or advertising. Provided, however, that this article shall not apply * * * (3) other corporations heretofore or hereafter organized under the laws of this state or of the United States to the extent that such corporations are authorized under their charter or the laws of this state or the United States to conduct such business or to use such term. * * *

Clearly the applicant insurance company should not be permitted to employ the word "trust" in its name unless the corporation comes within exception (3) just quoted.

It is our opinion the corporation does not come within that exception. The history of this statute and to the latest reenactment in the banking code shows that it was for the purpose of avoiding deception and misleading the public as to the character of the business conducted by the corporation using such words as "bank", "bank and trust", "savings bank", "trust", and other similar terms, those terms being familiar terms in connection with banking business as known to the public.

Article 4982 of the Revised Civil Statutes mentioned by you is as follows:

"Any person or association of persons, any State banking corporation or any other domestic corporation, or any corporation organized under the laws of any other State, provided such foreign corporation complies with the laws of this State, relating to insurance other than life, may exercise the following powers by complying with the provisions of this subdivision:

"1. Qualify as guardian, curator, executor, administrator, assignee, receiver, trustee by appointment of any court or under will, or depository of money in court, without giving bond as such.

"2. Become sole guarantor or surety in or upon any bond required to be given under the laws of this State, any other statute to the contrary notwithstanding."

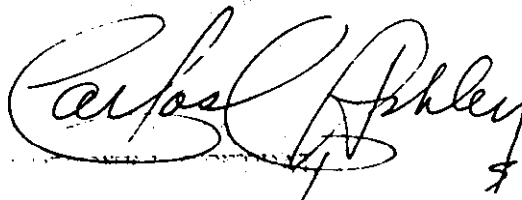
Now the special authority conferred by this article is not limited to banks is true, it includes state banking corporations but it likewise includes any other domestic corporation and any other corporation organized under the laws of another state upon certain conditions. Moreover, it includes any person or association of persons. Special powers are not essential banking functions, nor indeed are they essential functions in connection with the corporate purpose of other corporations. They are mere extraordinary powers conferred upon the class of persons and corporations mentioned as in the nature of incidental powers possessed by an ordinary specific corporate purpose. This being true, there is no implied authority for the possessor of such extraordinary fiduciary powers to use the word "trust" for the advertisement of its business. To permit it to do so would be calculated to mislead the public. Moreover, the possession of such extraordinary statutory powers is not such as to authorize by statute the use of such words forbidden as "trust", neither should the charter do so where the effect is to offend the evil sought to be remedied or prevented by the prohibition of Article 2, Chapter IX of the Banking Code.

Yours very truly

ATTORNEY GENERAL OF TEXAS

BY

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Osie Spear
Osie Spear
Assistant

